

Department of Legislative Services  
 Maryland General Assembly  
 2025 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 902 (Delegate Lehman, *et al.*)  
 Environment and Transportation and  
 Economic Matters

Environment - Coal Combustion By-Products - Fees, Coordinating Committee,  
 and Regulations

This bill requires the Maryland Department of the Environment (MDE) to, by regulation, establish a minimum fee, to be paid by generators of coal combustion by-products (CCB), of \$2.30 per-ton of CCBs generated annually. The bill also (1) alters the factors that MDE must base the fee on to include, in general, the volume of CCBs stored, as specified; (2) requires MDE to update its regulations to incorporate the fee changes; and (3) requires MDE to adopt regulations that implement specified federal guidelines and rules. Finally, the bill establishes the Statewide CCB Coordinating Committee staffed by MDE and the Power Plant Research Program (PPRP) in the Department of Natural Resources.

Fiscal Summary

**State Effect:** Special fund revenues to the CCB Management Fund increase by \$65.2 million in FY 2027. The FY 2026 budget as introduced includes \$200,000 in special funds contingent upon the enactment of legislation to raise a CCB fee; thus, special fund expenditures increase by \$200,000 in FY 2026, and out-years reflect ongoing costs. General fund revenues increase significantly beginning in FY 2027 from interest earnings.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
GF Revenue	\$0	-	-	-	-
SF Revenue	\$0	\$65,205,000	\$0	\$0	\$0
SF Expenditure	\$200,000	\$204,000	\$208,100	\$212,200	\$216,500
Net Effect	(\$200,000)	-	-	-	-

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Minimal or none. The bill is not expected to directly affect local finances.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** In addition to other factors established under current law, MDE must base the annual fee for CCB generators on the volume of CCBs that have been disposed of and remain in landfills or other storage units in the State that are subject to inspection and monitoring, not including CCBs that have been (1) added to cement products; (2) used in coal mine reclamation; or (3) beneficially reused in a manner that is acceptable to MDE.

The Statewide CCB Coordinating Committee must meet at least twice a year beginning in 2026, as specified. The coordinating committee must, with respect to CCB sites, share information on monitoring results and discuss remedial action that is in process, is still required, or both. By October 1, 2026, and each October 1 thereafter, the coordinating committee must report its findings during the immediately preceding year to specified committees of the General Assembly. Members of the coordinating committee may not receive compensation, but are entitled to reimbursement for expenses, as specified.

By December 1, 2025, MDE must update its regulations to incorporate the bill's changes to the CCB generator fee. By October 1, 2026, MDE must adopt regulations to implement (1) the federal Steam Electric Power Generating Effluent guidelines as adopted on May 9, 2024, and (2) the final rule governing legacy coal combustion residuals as adopted on May 9, 2024. In adopting the regulations to implement the final rule, MDE may amend the regulations as necessary to protect human health and the environment in the State, including (1) targeting actions at specific locations where CCBs have been used and (2) expanding the list of chemicals required to be tested beyond those required by the U.S. Environmental Protection Agency (EPA) to include specified chemicals.

### **Current Law:**

#### *Coal Combustion By-Products in General*

“Coal combustion by-products,” as defined in § 9-281 of the Environment Article, means the residue generated by, or resulting from, the burning of coal. CCBs are produced primarily from the burning of coal in coal-fired power plants. CCB include fly ash, bottom ash, boiler slag, pozzolan, and other solid residuals removed by air pollution control devices from the flue gas and combustion chambers of coal-burning furnaces and boilers. CCBs, which are also as referred to as coal ash and coal combustion residuals (CCR), are regulated at both the State and federal level.

#### *Federal Regulations*

*Resource Conservation and Recovery Act – In General:* 40 CFR Part 257 contains the criteria for the classification of solid waste disposal facilities and practices under the

Resource Conservation and Recovery Act (RCRA). RCRA is a federal law that gives EPA the authority to control hazardous waste.

*Federal Regulation of Coal Combustion Residuals:* EPA proposed the first federal regulations of CCB disposal in June 2010, and published the final rule in April 2015. The final rule classifies CCBs (referred to as CCRs within the rule) as a nonhazardous waste subject to RCRA Subtitle D requirements for disposal. These requirements are primarily enforced at the state level. The federal rule also established monitoring requirements for CCB landfills.

*Regulation of Legacy Coal Combustion Residual Sites:* The 2015 federal rule did not address coal ash that has been placed into unlined landfills, ponds, and structural fill sites that were closed before its enactment (also called “legacy sites”). EPA finalized changes to CCR regulations for legacy CCR surface impoundments at inactive electric facilities on May 8, 2024, in response to an August 21, 2018 opinion by the U.S. Court of Appeals for the District of Columbia Circuit (*Utility Solid Waste Activities Group, et al v. EPA*) that vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the 2015 CCR Rule. On November 8, 2024, and on January 16, 2025, EPA published a direct and second direct final rule and companion proposed rule to correct errors and clarify provisions in the May 2024 legacy CCR rule.

*Steam Electric Power Generating Effluent Guidelines:* Pursuant to its authority under the federal Clean Water Act, EPA promulgated a [final rule](#), effective July 8, 2024, that revises and strengthens the wastewater discharge standards that apply to coal-fired power plants to reduce discharges of toxic metals and other pollutants from these power plants into waterbodies. The rule establishes more stringent discharge standards for three wastewaters generated at coal fired power plants: (1) flue gas desulfurization wastewater; (2) bottom ash transport water; and (3) combustion residual leachate. The rule also establishes a new set of definitions and new effluent limitations for various legacy wastewaters that may be present in surface impoundments.

#### *State Management and Tracking of Coal Combustion By-products*

*State Regulations of Coal Combustion By-products:* At the State level, the Code of Maryland Regulations (COMAR 26.04.10) governs the management of CCBs broadly. There are also regulations that specifically address the utilization of CCBs in surface coal mining and reclamation operations in abandoned coal mines (COMAR 26.20.24) and noncoal surface mine reclamation (COMAR 26.21.04).

*Generator Fees and the Coal Combustion By-Products Management Fund:* MDE is required to, by regulation, establish and collect a fee to be paid by a generator of CCBs based on a per ton rate of CCBs generated by the generator annually. MDE must base the

fees on the following factors: (1) the total annual tonnage of CCBs that the generator generates; (2) the type and volume of CCBs generated by the generator; (3) whether the generator uses or disposes of the CCBs; (4) to the extent that the CCBs are used rather than disposed of, the types of the uses; (5) whether the CCBs are transported for use or disposal out-of-state; and (6) other factors MDE considers appropriate.

Chapter 480 of 2009 established a CCB Management Fund comprising fees collected by MDE on each ton of CCBs generated. The money generated from the fee must be used to administer and implement programs to control the disposal, use, beneficial use, recycling, processing, handling, storage, transport, or other requirements related to CCB management.

Regulations establish that the initial base fee for each ton of CCBs generated is \$1.15, but the fee is adjusted annually to ensure that fee revenues approximate the cost of regulatory activities as required in statute. Statute prohibits the fee from being imposed on CCBs that are (1) beneficially used, as determined by MDE or (2) used for mine reclamation in accordance with MDE regulations or regulations of the receiving state. Regulations also exclude generators that generated less than 10,000 tons of CCBs per year from the fee. In any fiscal year, if the fee schedule established by MDE generates revenues that exceed program costs, MDE must reduce the fees in the following fiscal year.

*The Power Plant Research Program:* Pursuant to its responsibilities under the Power Plant Siting Act of 1971, PPRP researches power plant impacts to Maryland's natural resources, including the Chesapeake Bay. In addition to surface water concerns, PPRP evaluates impacts to Maryland's ground water, air, land, and socioeconomics for proposed power facilities and transmission lines, both for new installations and for modifications to existing structures. This extends to tracking and evaluating CCB storage, use, and disposal sites across the State.

### **State Fiscal Effect:**

#### *Timing and Amount of Special Fund Revenues*

CCB generators report annual tonnage amounts on a calendar year basis. MDE sets proposed annual generator fee rates based on these reports and then sends the proposed rates to the General Assembly for approval before finalizing and billing CCB generators. As a result, there is a lag between the time that CCBs are generated and when the generators are billed. This means that there is also a delay in the collection of the increased fees under the bill. As a result, there is no impact on special fund revenues in fiscal 2026 despite the bill's October 1, 2025 effective date.

Special fund revenues increase by an estimated \$65.2 million in fiscal 2027 from the application of the annual generator fee to CCBs that have been disposed of in landfills or other storage units in the State and the establishment of a minimum base fee of \$2.30 per ton. According to MDE, there are approximately 28.35 million tons of CCBs stored at four sites in the State. Because MDE may not charge less than the \$2.30 per ton base fee set by the bill, MDE collects approximately \$65.2 million in fee revenues in fiscal 2027, which is magnitudes higher than program costs in any given year. MDE estimates that this single year revenue will sustain the program for decades. Pursuant to statute, MDE is required to reduce fees in any fiscal year if the fee schedule from the preceding fiscal year generates revenue that exceeds necessary operating costs. Thus, it is assumed that MDE does not collect annual fees from generators again for many years.

#### *Special Fund Expenditures and the Potential Need for a General Fund Deficiency Appropriation in Fiscal 2026*

The bill itself does not require additional spending by MDE under the program. However, the fiscal 2026 budget as introduced includes \$200,000 in special funds for MDE contingent on the enactment of legislation to raise a CCB fee, and this bill effectuates that contingency. Thus, special fund expenditures increase by \$200,000 in fiscal 2026. Future year estimates assume that special fund expenditures increase by 2% annually from that level, although actual spending – while not required by the bill – could be significantly higher given the significant fund balance that will exist once fee revenues are collected in fiscal 2027, as well as an existing program deficit (discussed more below).

The Department of Legislative Services notes that the current fee, based exclusively on CCBs produced, has been applicable to fewer generators over the years, as CCBs produced in the State have decreased. MDE advises that with the last coal-fired power plant being slated to cease burning coal in calendar 2025, there will be no generators that meet the threshold to pay the fee, resulting in a deficit for the program of approximately \$1.0 million annually. Therefore, it is likely that MDE does not have sufficient special fund revenues or fund balance in fiscal 2026 to cover the contingent special fund appropriation included in the fiscal 2026 budget as introduced. Thus, a general fund deficiency appropriation may be needed in fiscal 2026 to cover those costs; any such effect has not been accounted for in this analysis.

#### *Coordinating Committee*

MDE and PPRP can staff the coordinating committee with existing resources, and any expense reimbursements for coordinating committee members are assumed to be minimal and absorbable within existing resources.

### *General Fund Revenues from Interest Earnings*

Because interest earnings of the CCB Management Fund are credited to the general fund, general fund revenues from interest earnings of the fund increase significantly beginning in fiscal 2027 due to the significant fund balance resulting from the bill's changes.

**Additional Comments:** Senate Bill 250 of 2025, a departmental bill, also alters the factors that MDE must base the CCB generator fee on to include the volume of CCBs that have been disposed of and remain in landfills or other storage units in the State that are subject to inspection and monitoring, except as specified.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 425 (Senator Jackson) - Education, Energy, and the Environment.

**Information Source(s):** Maryland Environmental Service; Calvert, Howard, and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Maryland Department of the Environment; Maryland Department of Health; Department of Natural Resources; U.S. Environmental Protection Agency; Department of Legislative Services

**Fiscal Note History:** First Reader - February 7, 2025  
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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510